

Feb. 6, 2009

Stacey Dykeman  
705 Spanish Peaks Dr.  
Missoula Mt. 59803

406 370 2111

Morado Mtn Estates LLC  
8-mile Road, Florence, MT  
Ravalli County

Mr. Chairman and Members of the Senate Local Government Committee:

I support the Senate Bill 305.

Governing bodies need to have substantial credible evidence for denying Sub-divisions

My subdivision Morado Mtn Estates was denied its variance and approval based on the unsubstantiated finding of negative impact to Health and Human Safety. There was no evidence to support their findings.

Fact: We offer 300 gal water tank at far end of Fire Dept jurisdiction that would have benefited the whole 8-mile community. At a cost of \$30,000.

Fact: We offered a fire dept substation at the far end of Fire Dept jurisdiction that would have raised the whole community's insurance safety rating. At a cost of \$60,000.

Fact: We offered to pave four miles of county roads at great expense, and bring them to ASHTO existing road standards. We were paying close to \$650,000 for this one impact.

They would only approve this subdivision of 58 houses on 160 acres if we rebuilt the road to New ASHTO Standards, which would have been \$4 million project. But since this is an existing road, we should have been only made to up hold existing standards.

We had support of the people, home owners association, the County Attorneys Office, the County Road Dept, and the Planning Staff report.

We had expert engineering testimony on the safety facts of the road, on both how unsafe it was existing, and how safe it would be with our proposal. They were ignored and scoffed at.

We actually worked together with another developer to make great improvements in the 8-mile area.- Big Sky Developments.

Our mitigation to impacts went far beyond what has ever been offered.

The county commissioners put an unfair burden on our 58 lot subdivision for impacts.

The county thought it was safer to leave a potholed, broken apart, substandard road in place, than have the road rebuilt with 4" of pavement. The people in the community came out in force to ask them to approve this; the people of the 8-mile area, respected and were thankful to a small developer was offering to improve their community for once. The commissioners have taken pro rata before, but it very seldom goes to the place of the impact.

These commissioners are using Health and Human Safety as a tool for non-growth and with no criteria to follow it is an ambiguous perimeter to try and fill. They are putting undo hardship and mitigation onto small developments, which go beyond said developments impacts.

The commissioners were requiring Capital improvements to an already problematic area of the county, and making developers go above and beyond their impacts of the area.

Delay in sufficiency is another problem and delaying tactic of the counties

The whole process is broken. It took over 2 years to get sufficiency with 12-14 back and forths with the planning dept. They would review application, and then send a letter out of insufficiencies 2-5 pages long, we would fill the insufficiencies and then they would send another letter out and start all over. It is a delaying tactic, which cost landowners greatly. They have set times once you are found sufficient, but they will delay you with insufficiencies over and over again. They should have only so many reviews to find insufficiencies.

We need to protect the environment and Montana, but we also have to protect people's property rights. Property rights are the basis of our Constitution. No one in America is living in any kind of domicile that has not been developed for them. Development is not a dirty word and it is essential. Right now in Montana it is being persecuted unfairly, we have to make this a better system with laws, and regulations everyone can follow that benefit everyone.

Sincerely,

Stacey Dykeman

February 6, 2009

**REFERENCE: SB 305 – Revise the Subdivision and Platting Act**

**Hearing: Senate Local Government Committee, Feb. 6, 3 p.m., Rm 303**

Mr. Chairman and members of the Committee,

I would like to enter this letter in testimony in favor of SB 305.

In my 20-plus years in the real estate industry, I have worked with many clients who subdivided their land. Some of those clients were builders, some were developers, some were families facing a financial crisis. In recent years, it's become apparent that the individual property owner is not operating on a level playing field when it comes to dividing property.

This proposed legislation is attempting to level that field – to balance public health and safety with the individual's property rights. In many instances of minor subdivision, the local governments have used public health and safety as a club to delay and even deny a proposed subdivision. The problem is that no evidence was given to support the delay or denial.

Another critical problem is the missed time limits by county government. I have one client who was dividing a 12 acre parcel into two parcels. That took nearly three years to get done. There is constant, flagrant disregard of the legal time limits on the part of the county government. The property owner has no recourse. Another project, 20 lots on 40 acres, has taken four years and a lawsuit to gain approval. The subdivision had been recommended for approval by the planning staff but was denied by the Commissioners. Imagine my surprise to hear one of the Commissioners comment that the law was only one consideration in the approval process! Consequently, my clients are facing dire financial straits. His business projections had not included sitting on his initial investment for that length of time. This case is really tragic – the people involved are parents and two sons. All are facing losing everything. And, I squarely put the blame on local government and their capricious decision-making.

I cannot stress enough the need for county governments to provide credible evidence of their claims when requiring conditions or issuing denials. Too often the decision is swayed by emotion and not facts. My county has a very vocal "no-growth" sector. Emotions are whipped into a frenzy at virtually every hearing. Again, the property owner is not on a level playing field because there are no facts presented.

I strongly urge you to support this most needed legislation.

Teresa D. Polumsky  
{Chair, Political Affairs Committee, Montana Association of REALTORS®}  
827 Mint View Road  
Corvallis, MT 59828  
406-961-3297, 406-546-5802

**To Whom It May Concern:**

We are writing this letter to inform you of the difficulty that we have had going through the subdivision process in Ravalli County. We bought four 10-acre tracts of land a total of 40 acres in July of 2004. The property is located at 721 Hamilton Heights road. In the beginning of 2005 we attempted to do boundary line relocations on the 10 acres parcels to recuperate some of cost of the land. We were denied by our 3 county commissioners on the basis of subdivision evasion. So we moved on to designing a 20-lot subdivision. During this time we met with the Ravalli County Sanitation department up on the 40 acres to do a soil site evaluation. They decided that they wanted the whole 40 acres to be monitored for ground water even though this property is on a hill and has no ground water issues. It was mid summer 2005 at this time and the Sanitation Department monitors from approximately April through July and so they made us wait until spring of 2006 to monitor. By the fall of 2006 we had our application in the planning office and were going through the process of fulfilling their requirements for the subdivision. Our design at this time was a combination of 1-5 acre parcels with a park in the subdivision. But on Election Day in November of 2006 Ravalli County put a 2-year policy into place that no new subdivision lots can be smaller than 2 acres. The County Commissioners decided that even if you had your subdivision application in and you were working on your subdivision before the policy went into affect that you had to come into compliance with the new policy. Well for us this cost us months of planning and thousands of dollars to go back through and redesign our subdivision. After redesigning the subdivision and fulfilling all the requests and requirements that the Ravalli County Planning Department had asked or required for the subdivision in the spring of 2007. We had to wait until August of 2007 to have our meeting with the county commissioners. The recommendation from the planning staff was to accept our subdivision. But in the meeting with the commissioners they brought up 3 things about our subdivision that they did not like.

1. One of the commissioners said that they had walked the road leading up the hill to the subdivision and they did not think it was a safe road. (She did not even look at the road design that was designed by Horat Engineering and approved by Ravalli County Road department and W.G.M.) The TRAIL that she walked was the old trail that the farmer that owned the property before us used to get up on top of the hill.
2. The commissioners did not like the fact there is irrigation water going to the property and that we were going to take that water away from agriculture use. They said that they did not think homeowners could use the water as well as farmers.
3. The commissioners did not like us pulling what they called PRIME AG away from agriculture use. According to their criteria we have 17% (PRIME AG) on the 40 acres.

Upon bringing up these 3 things they voted to deny our subdivision in a vote of 3-1. To say the least we were confused and upset with their vote we wondered how three people who have no experience in building roads could tell an engineering firm whom

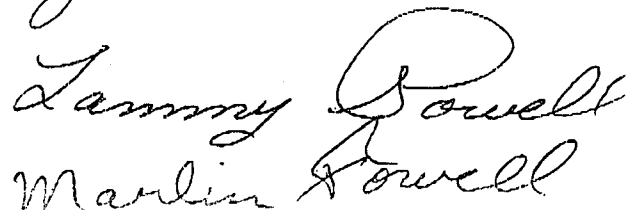

they hired that they did not think the road the engineering firm designed was safe even though it meet all of the requirements for a road in this county. We also wondered how they felt they had the right to tell a property owner how they could or could not use their irrigation water. When the water system was designed and engineering by professionals and the amount of water that was going to be used in the subdivision was going to be metered so that it only used its legal right. The last issue over AG we did not know what to think.

At this time we felt our only option was to seek legal advice. So we hired Datsopoulos Macdonald and Lind out of Missoula to represent us. We filed a lawsuit against Ravalli County in October of 2007. Our meeting with the commissioners over our lawsuit happened in March of 2008. At which meeting the attorney representing the County told the commissioners that it would be difficult to defend them in court because the road and water designs were done by engineering firms and meet all of there requirements. And that they never gave us an opportunity to mitigate the lose of agriculture land. After a lengthy discussion they voter unanimously to accept our terms of the suit. As I mentioned this happened in March we did not receive our approval letter for the county until June over 120 days later.

We would like to thank you for taking the time to read this letter. As you can tell it has been a difficult road for us to get this subdivision through. It took almost 4 years and thousands of dollars of changes to please this county. When we started this project almost 5 years ago we ask the bank if it would be a problem to get financing to do the infrastructure they told us that it would not be a problem. Well as you are aware of the economic times now now we are unable to get a loan for the infrastructure and we don't know how long we are going to be able to how on to the land and keep paying the interest payment. This letter we write is not for us but our hope is that you will consider this information and pass some laws that hold the counties of Montana to a reasonable time line to work with the builders and developers that are just trying to make a living. If you would like any more information we would be happy to provide it. Josh, Mandy, Marlin, and Tammy Powell

P O BOX 546 Corvallis Montana 5928

THANK YOU,

February 5, 2009

RE: SB 305

To Whom It May Concern:

I want to write a letter of my full support to SB 305. I feel strongly that a predictable system creates a stable economy. We are struggling with the economy right now and we are all wondering what can we do? A predictable system with rules that are clearly outlined and followed would do so much to help the economy. It would create predictable jobs, predictable projects, and help everyone to prosper including the government. Private property rights are being ignored, the government is required to have deadlines and follow those but it is not followed. We certainly know as we have been trying to develop 8 lots for three years.

I have worked in the real estate industry for 29 years. Throughout this time I know that when new development and growth or occurring you have a productive society. Many studies have been proposed that supposedly say development does not pay. I feel they do not take the whole picture into consideration and do not consider construction, jobs, affordable housing, and production along with many jobs that are created even in the government to help with the work.

We recently received approval on our subdivision but with quite a cost. For approx. ½ mile of a county road we will have paid \$60,000. They are saying that we need this to not only mitigate this portion of the road but also State Highway that gets to the county road. We are also told that this money will probably never be used to improve the county road. So they tell you have your subdivision creates such a public impact and you have to pay the money but it will probably never be used. And in our case, they even came back and said legally they would and could charge us for dust abatement. Certainly does not seem fair with the amount of money that we have to pay. I feel private property rights are overlooked when everything inside the subdivision is required to have a paved road (higher standard than what the government is required) and all concerns of public safety are mitigated but nothing happens with the money you are required to pay.

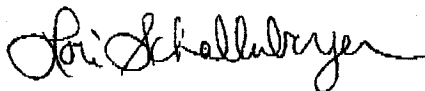
I also feel that before any impact fees or voluntary impact fees are required there needs to be data to back it up. In our case we were told that the local school was increasing approx. 4 students per year. But when we looked over the data we found that from 1997 to present that our school had only increased 4 students.

I think all of us are going to need to pull together to get the economy back on track. It is very difficult to sell land now and sales are way. All of the fees are passed onto the consumer and in the end it becomes too much for the home buyer to absorb.

I have a client who has done a few smaller projects in Ravalli County and refuses to do any more development because of the ignoring of time deadlines, unpredictable and hidden costs that you don't find out until the end of the project, and no level of predictability. The denial of time deadlines because of the government cost him and a great deal of money. This system needs full attention and no one would run a private business with out predictability. I know we had to change our project 3 times and were constantly being told different information and time frames. It is very frustrating and costly.

Thank you for your time and I would appreciate your support as I feel this is very important to our economy.

Sincerely,



Lori Schallenberger  
20 Lost Lamb Lane  
Hamilton, MT 59840  
406-363-3717

Has a current Montana real estate license.

Name: Chris Cobb-Taggart  
Address: Professional Consultants, Inc.  
1713 N. 1<sup>st</sup> Street  
Hamilton, MT 59840  
Phone #: 406-363-1201  
RE: SB 305 – Revise subdivision and platting act

Mr. Chairman and Members of the Committee:

Please accept the following as my testimony to the referenced sections within SB 305 as I am unable to physically attend the hearing.

Section 4 – Payment for extension of capital facilities

- In Ravalli County, it has been my experience that the pro rata calculations, capital facilities mitigation calculated for developers on their proportionate share of road improvements from a 'County standard road' to the development, have been inappropriately calculated on a number of levels.
  - The pro rata mitigation fees which a developer pays in full, prior to final plat acceptance, are not applied to improve the road(s) which the pro rata calculations are based upon, but are generally applied to other roads in the "district". These pro rata mitigation fees can equate to large sums of money (often exceeding \$10,000 per lot) and should be appropriately applied to the roads for which the calculations belong.
  - In some cases, if the preliminary plat conditions are not met until the last few weeks of the 18 month approval timeline, the pro rata calculations/charges are re-calculated using more current, updated formulas, which equate to a much greater cost to the developer. The pro rata calculations prepared during the subdivision process should be consistent and based upon the formulas in place at the time the subdivision submittal process starts (pre-application date). This would provide the developer with a set dollar amount that they know they will be required to pay prior to final plat acceptance.

Section 8 – Review requirements – written statement

- In Ravalli County, it has taken up to 4 months from the date of the Commissioners meeting to obtain the written, signed Commissioners approval.
  - This is completely unacceptable, so we favor the proposed 20 day limitation.

*Chris Cobb-Taggart*  
*Professional Consultants, Inc.*  
*1713 N. 1st Street*  
*Hamilton, MT 59840*  
*406-363-1201*  
*406-363-1215 fax*  
*chrisc@pcimontana.com*

Date: 2-6-09  
To: Senate Local Government Committee  
From: Jerry Hamlin, 1625 University Street, Helena, Mt. 59601  
Re: Support testimony for SB 305

Mr. Chairman and Members of the Committee:

I am currently in California and can not personally appear before you but I am hereby taking this opportunity to submit my comments on SB 305 to you in writing. Thank you for this opportunity to comment on the proposed, SB 305 amendments to the subdivision regulations

I have spent several hours reviewing the proposed changes and would like to state, first of all, that I firmly believe that well written, concise regulations with clear objectives are a necessity to provide for orderly growth in an effective and cost efficient manner. In short, I am in favor of having regulations, I believe in the system of regulating and I have participated in the process both as a Developer for over 35 years and as a Planning Board member for over 7 years. Regulations are essential tools for managing growth and promoting the goals of the county and assuring the public's health safety and welfare.

The amendments offered in SB 305 are appropriate and desperately needed to help clarify, illuminate and facilitate understanding of the complex issues of Private Property Rights and Subdivision Regulation. I am a firm believer that these two concepts can, and should, be able to co-exist without creating confusion, consternation or conflict. I am a proponent of good planning that provides for clear, concise, easily understood and reasonable regulations that can be consistently applied and enforced. I believe all of the changes SB 305 are good and do an excellent job in promoting these ideals. However, in the interest of conserving time, I will limit my comments to just two of the proposed amendments as follows:

- A) The amendment to section 2 adding "Protection of the rights of property owners" adds a very important item which should be considered when developing any set of land use regulations. The right to own, develop and dispose of property by following clearly written regulations that conform to statute and policy is one of the fundamental and eternal "unalienable rights" which were practiced by our founding fathers. Therefore, adding this phrase reinforces this "unalienable right" that has been a part of our country since it was formed.
- B) The amendment to Section 4 of the regulations concerning "Payments of extension of Capital Facilities" is extremely important and affected me personally during the last year. My experience in Lewis & Clark County has led me to believe this is the most misunderstood, and mistakenly applied, section of existing law. After spending over 13 months trying to comply with all of the subdivision regulations, my proposal was finally denied based on the road requirements required by this section of the law as interpreted by the Lewis & Clark County Commissioners. In a nutshell, I had agreed to pay for 50% (or approximately \$500,000.00 based on extensive engineering analysis and computations of "impacts directly related to my subdivision) of the upgrade to 2 miles of off site roads to access my subdivision. The County admitted

that this road currently did not meet existing County road standards; that it had existing traffic of over 2600 cars per day; and that the traffic from my subdivision would add 2500 cars per day. I also submitted detailed engineering analysis and core tests of the existing road surface and specified exactly how the improvements I proposed would mitigate the impacts from my subdivision. The County refused my proposal (I wonder if they ever really read it based on their comments to the Independent Record saying "I agreed to pay "50% of what"?") and denied my subdivision primarily because of the road improvements. Please see the attached detailed information on the roads submitted with my road mitigation proposal.

Therefore, I believe the amendments offered to Section 4 in SB 305 go a long ways to clarify, in writing, 4 important points:

- 1) First, "mitigation of impacts to capital facilities" should be clearly understood to mean "local capital facilities within local government's limits".
- 2) Second, new subdivisions should not be required to pay for costs to upgrade existing, substandard roads or other capital facilities. Therefore, SB 305 clearly states that "costs associated with correcting existing deficiencies within capital facilities are not directly attributable to the subdivision". In addition, SB 305 states "subdivisions may not be held to a higher level of service than existing users unless the local government has provided a method whereby existing users make improvements to the existing services to meet the new, higher level of service." This language goes a long way towards dispelling the idea the County used in denying my subdivision and makes it equitable by requiring existing users to pay their fair share of upgrades.
- 3) Third, local governments should not be able to require new subdivisions to pay for impacts to state services or state capital facilities. SB 305 inserts language to this effect and clarifies what Counties can require.

In summary, while I acknowledge this isn't just "about me", I believe SB 305 would have cleared up the legal question involved in the denial of my subdivision and would have saved both Lewis & Clark County and myself years of costly litigation regarding off site road improvements. Once again, I thank you for taking time to review this information and I urge you to vote "yes" on SB 305.

Sincerely yours,

Jerry Hamlin  
1625 University Street  
Helena, Montana 59601



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8-23-07

Planning Department  
Lewis & Clark County

Attention: Lindsay Morgan, Planner

Re: Lake Helena Drive Road Impact Mitigation Measures

Dear Lindsay;

After spending considerable time and effort in meeting with contractors, engineers and Eastgate Homeowners Association members during the last month, we have discovered some significant, additional facts that further clarify our mitigation proposal for Lake Helena Drive

Following are some of the more significant items:

- 1) We have hired a Professional Engineering Firm, Pioneer Technical Services, Inc., to core sample the existing road surface to determine whether or not the existing road surface and base meet current County standards. The report is attached to this letter for your review and it concludes that the Lake Helena Drive roadway surface from Canyon Ferry Road south to the existing State Highway known as "East Main Street" (Old Highway 12) meets existing County Standards for gravel depth and pavement thickness.
- 2) We have also met with Engineers to determine if the existing Lake Helena Drive roadway from Lewis Street South to East Main Street (see attached aerial view photo) meets standards for a major collector road. The engineers have issued a report (please see attached copy from WWC Engineering) that states there is presently a 35 mile per hour speed limit currently in place on this stretch of road and that this stretch of road meets AASHTO criteria for a major collector road with a 35 MPH design speed. The existing roadway has a 34' wide asphalt surface and drive over curb on each side. AASHTO requires a minimum roadway surface of 30'. The existing right-of-way width on this section of road appears to be about 110' from fence to fence. Therefore, the engineer's final statement is "the existing road section of Lake Helena Drive between Lewis Street and East Main Street (Old Hiway 12) is adequate to accommodate the existing traffic demand and the proposed future traffic from the Red Fox Meadows Development."
- 3) I have met with several adjacent landowners and I am trying to obtain a 20' right-of-way easement from them for the future widening of Lake Helena Drive from Canyon Ferry Road South to Lewis Street. We have obtained a Letter of Intent from one of them for about 3000' of easement and a commitment, but no letter yet, from another one for about 5200' of easement. Combining these commitments with that we have already granted in our proposal brings the total additional easements obtained to about 10,270 lineal feet or about 2 miles. The total additional easement needed for this

section of road is around 3 miles so we have obtained commitments for about 2/3 of what is needed. I intend to continue to work on these easements until I have met with every landowner until I get a rejection or an acceptance. I will keep you updated on my progress.

4) I have also met with a contractor and received an estimate of between \$550,000.00 to \$600,000.00 to complete the work necessary to widen, from 25' to 36' wide, approximately 7950' or about 1.5 miles of Lake Helena Drive from Canyon Ferry Road to Lewis Street. I have attached a copy of the estimate to this letter along with details of the plans from MDT who designed a similar stretch of road on Montana Avenue.

5) In addition to paying 50% of the costs itemized out in # 4 above as per my letters of 6-20-07 and 7-21-07, we plan to pay costs associated with the installation of a traffic signal to be located at the intersection of Canyon Ferry Road and Lake Helena Drive. We further have agreed to pay for all costs of approaches and turn lanes required on Canyon Ferry Drive as a result of our subdivision as well as a paved bike path from our subdivision South to existing walking/bike paths in the Eastgate Village subdivision. Representatives from the school system are in agreement with our plan.

6) We have attached an aerial view photo of the improvements to Lake Helena Drive described in this letter to help you better understand and see what we are describing.

In closing, we continue to believe that that these mitigation measures have adequately addressed all of the staff concerns regarding the impacts from our development to Lake Helena Drive and Canyon Ferry Road as well as any concerns about students walking to school. The Transportation Section of the current County Growth Plan states "Due to the interrelationship of public and private benefits associated with transportation facilities, cooperation in the design, construction, maintenance, and funding of transportation facilities is common practice." We see this as an excellent opportunity to form a public-private partnership and work with the County on this project and, as we previously stated at the first County Commission hearing, we believe that, working together with County, we can accomplish things that would be impossible for either of us to accomplish separately. We stand ready to help in finding positive solutions for the overall funding of this project and will look forward to being part of the solution to mitigate the existing and proposed safety concerns on Lake Helena Drive. Together, we can take this first step in establishing an excellent and safe road system that supports desired development patterns, in order to accommodate an ever increasing population and the related challenges and opportunities. Thank you for your time in reviewing this mitigation proposal.

Please let me know if you have any questions regarding this letter and thank you for your time in reviewing this.

Sincerely yours,

Jerry Hamlin, President